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In The
Supreme Court of the United States

No. 449 Term, 1961

IN RE: LUIS OSCAR IRIZARRY and CARLOS OSCAR IRIZARRY, Minor Children of LUIS OSCAR IRIZARRY and ISABEL BLONDET ARMOUR

vs.

LUIS OSCAR IRIZARRY, SR.,
Petitioner

ISABEL BLONDET ARMOUR,
Respondent

PETITION FOR WRIT OF CERTIORARI

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IN THE SUPREME COURT OF THE UNITED STATES

No. Term, 1961

In Re: Luis Oscar Irizarry and Carlos Oscar Irizarry, minor children of Luis Oscar Irizarry and Isabel Blondet Armour

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Luis Oscar Irizarry, Sr.,
Petitioner
Isabel Blondet Armour,
Respondent

PETITION FOR WRIT OF CERTIORARI

Luis Oscar Irizarry, Sr., hereby brings this petition for a Writ of Certiorari directed to the Supreme Court of Pennsylvania and respectfully represents as follows:

OPINIONS AND ORDERS BELOW

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a. The official and unofficial reports of the same case below are found at 195 Pa. Superior Ct. 104, 169 A. (2d) 307 (1961), and 48 Del. Co. Legal Journal 372 (1960), 143 Legal Intelligencer 51, September 13, 1960. The decision of the Pennsylvania Supreme Court is not contained in any official or unofficial report so far as petitioner knows.

JURISDICTION

b. A concise statement of the grounds on which the jurisdiction of the Supreme Court of the United States is invoked is as follows:

i. The date of the decree sought to be reviewed was July 12, 1961; entry was made the same day. This was a refusal by the Supreme Court of Pennsylvania to allow an appeal from the Superior Court of Pennsylvania, which decided adversely to petitioner on April 13, 1961, following an appeal from the Court of Common Pleas of Delaware County, whose decree was entered adversely to the petitioner on September 14, 1960.

ii. There was no order respecting a rehearing and no order granting an extension of time.

iii. Jurisdiction to review by Writ of Certiorari is conferred by the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U.S.C.A. 1257(3). This is an instance where a right, privilege or immunity is asserted by petitioner under a federal statute.

QUESTION PRESENTED

c. The question presented for review follows:

Where a judgment of a Puerto Rican Court on August 7, 1957, awarded the custody of two minor children to their father, and orders of said Court on February 19, 1958, and March 6, 1958, confirmed said award, and the divorced mother moved to Pennsylvania where the children came on July 13, 1960, for a three week visit, and she thereupon petitioned a court in Pennsylvania to award their custody to her, and the court in Puerto Rico on August 1, 1960, issued a further order directing the mother immediately to return the children to the father, does not a decree of the court in Pennsylvania entertaining jurisdiction deny full faith and credit to the judicial proceedings in Puerto Rico?

STATUTE AND CONSTITUTIONAL PROVISION INVOLVED

d. The statute of the United States involved is the Act of June 25, 1948, c. 646, 62 Stat. 947, found in 28 U.S.C.A. 1738, in particular at the third paragraph thereof:

> "Such Acts, records and judicial proceedings [of any State, Territory, or Possession of the United States] . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Since the phrase, "full faith and credit", should receive the same construction in this statute as in the full faith and credit clause of the Federal Constitution, the latter is involved as well. It is Article IV, Section 1, the first sentence:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State."

STATEMENT OF THE CASE

e. A concise statement of the material facts follows:

The petitioner and the respondent were lifelong residents of Puerto Rico and were divorced on August 7, 1957,

by a judgment of the Superior Court of Puerto Rico. The judgment contained a provision awarding custody of the children to the father (petitioner here). There were orders of February 19, 1958, and March 6, 1958, regulating the visitation rights of the mother, but both orders confirmed that the father had custody of them. The mother then married a resident of Pennsylvania and moved there. The mother was accorded the right by the father to have the children on a three weeks visit to Pennsylvania commencing July 13, 1960, to terminate August 3, 1960. She broke the bargain and applied instead to the Court of Common Pleas for the custody to be awarded to her. On August 1, 1960, the Superior Court of Puerto Rico ordered the mother immediately to deliver the two boys, ages 9 and 10, to the father, without excuse or pretext whatever, and warned her that if she failed to comply she would be guilty of contempt.

On August 4, 1960 the father desiring to obtain affirmative action, by his attorney, presented in the Court of Common Pleas of Delaware County, Pennsylvania, a petition for a writ of habeas corpus. Hearing on this petition was suspended and still remains suspended, pending determination of the petition of the mother to which the father filed a special appearance and preliminary objections challenging the jurisdiction of the court. After an adverse determination by the Court of Common Pleas of Delaware County on September 14, 1960, there was a further order of the Superior Court of Puerto Rico on September 16, 1960, again declaring its jurisdiction over regulating the custody and directing the mother to appear with the children in Puerto Rico.

f. The federal question herein raised was raised at various stages below as follows:

i. *Court of Common Pleas*

In his "Answer in the Nature of Preliminary Objections Challenging the Jurisdiction of the Court" the father alleged:

> "5. Your Honorable Court has no jurisdiction to determine the permanent custody of said minors, since this has already been determined by a court having jurisdiction thereof, namely, the Superior Court of Puerto Rico."

Pennsylvania is a fact-pleading state and therefore the words "full faith and credit", being words of legal conclusion were properly omitted from the above allegation, but the basic facts were properly alleged therein to support the thesis that full faith and credit ought to be given to the Puerto Rican Court.

In his brief before the above court the petitioner included the following:

> "3. Full Faith and Credit
>
> "The act of a court of Puerto Rico is entitled to full faith and credit. See Act of Congress June 25, 1948, 28 U.S.C.A. 1738. The status of Puerto Rico can be found in Acts of Congress appearing in 48 U.S. C.A. 731b et seq."

In the colloquy before the court, the following words were uttered, reported at page 18a of the Record:

> "The Court: There is no doubt about it, gentlemen, Puerto Rico is a part of the United States.
>
> "Mr. Ciccarelli: Right.

"The Court: And we are bound to give full faith and credit under the Constitution to the decrees of that territory."

In the opinion of the Court of Common Pleas appear the words reported at page 135a.

"Such action does not violate the constitutional provisions of 'giving *full* faith and credit to the decree of courts of other jurisdictions'."

In the companion case, the habeas corpus case brought by the father to obtain immediate possession of the children, suspended pending the disposition of the instant case, there appeared in the petition for the writ the same words which were used in the "Answer in the Nature of Preliminary Objections Challenging the Jurisdiction of the Court", and which are quoted above.

ii. *Pennsylvania Superior Court*

No assignments of error are required to bring a case into the Pennsylvania Superior Court.

In his printed brief for this court the father stated:

"The act of a court of Puerto Rico is entitled to full faith and credit. See Act of Congress of June 25, 1948, 28 U.S.C.A. 1738. The status of Puerto Rico can be found in Acts of Congress appearing in 48 U.S.C.A. 731b et seq."

In addition the father cited and discussed the two United States Supreme Court cases dealing with this subject, namely, *People vs. Halvey*, 330 U.S. 610 (1947), and *Kovacs vs. Brewer*, 356 U.S. 604 (1958). These cases are distinguishable from the instant case, but reference is made to them here to show that the issue was dwelt upon. Furthermore, in his oral argument the attorney for the father

urged the application of the full faith and credit principle.

In its opinion the Pennsylvania Superior Court states:

> "Preliminary objections were filed by counsel for the father, who entered a special appearance for the purpose of challenging the jurisdiction of the court on the theory that full faith and credit must be given to the decree of custody already in existence in Puerto Rico . . . The contention of the appellant is that the court below does not have jurisdiction of this custody matter because it is bound to give full faith and credit to the custody decree of Puerto Rico and further, that the court does not have jurisdiction of the children because they are not residents of Pennsylvania but are here only for a temporary visit."

iii. *Supreme Court of Pennsylvania*

In his petition for allowance of an appeal from the Superior Court, the father stated:

> "3. The questions involved in this case are these . . .
>
> "b. Do the continuing orders of the court in Puerto Rico, in a situation like that outlined above, preclude the State of Pennsylvania from securing jurisdiction? The answer to this question involves the full faith and credit clause of the federal constitution and a statute of the United States."

The action of the Supreme Court of Pennsylvania consists only of three short lines, assigning no reason for said action, and therefore there are no quotable portions relevant solely to the federal question.

g. There is no judgment of a lower federal court in this case.

ARGUMENT

h. A direct and concise argument follows:

The judicial proceedings in Puerto Rico may be summarized ~~suci~~ ollows: A judgment of August 7, 1959, awardmarized as foll to the father; orders of February 19 and ing custody t958, providing for visitation rights in the March 6, 195 an order as late as August 1, 1960, confirmmother; and a er decrees and ordering the return of the ing the former eir father in Puerto Rico.
children to thei

of those judicial proceedings, containing ac-

In spite of as August 1, 1960, the Pennsylvania court, tion as late as rings on August 4 and August 11, 1960, con- based on heari jurisdiction to make an independent deter- cluded it had j did not order the mother to return the boys mination. It di co. It acted in total disregard of the order to Puerto Rico. Therein lay its failure to give full faith and of August 1. T Puerto Rican proceedings. credit to the Pu

There could ld be no assertion that Puerto Rico had lost jurisdiction bec ecause the minors were no longer in Puerto Rico. Jurisdict iction over custody cases is based on domicile (*Restatement of the Law, Conflict of Laws*, Section 117), and nothing ha had occurred in the meantime to change the domicile. The t temporary nature of the visit contemplated, the fact that the their clothing and other belongings remained in Puerto Rico, o, and other similar factors precluded any question of thei eir domicile having changed. Moreover, the father is the per erson with the right to determine their domicile. *Restatem ment of the Law, Conflict of Laws*, Sections 30 and 32. Puer uerto Rico was the home of all the parties, all

their lives, until the mother went to Pennsylvania, when her domicile changed; it was the domicile of the marriage; and it was the arbiter of the parents' divorce; its jurisdiction was solidly based. The judicial proceedings based on such factors are not lightly to be cast aside. Puerto Rico, therefore, retained jurisdiction and issued a valid decree on August 1, 1960.

There could be no assertion that circumstances had changed since the latter decree, which was the principle involved in *Kovacs vs. Brewer,* 356 U.S. 604 (1958). The interval from August 1 to August 4 is virtually instantaneous for this purpose.

The reasons why the Supreme Court should grant certiorari in this case are these:

1. The decision of the Pennsylvania courts here is contrary to *Kovacs vs. Brewer,* 356 U.S. 604 (1958). That case postulated a revision of the other state's decree on a change of circumstances following the previous decree. There could have been no such change here. The underlying assumption of *Kovacs vs. Brewer* is that without a change of circumstances the prior decree must be respected.

2. *Kovacs vs. Brewer,* 356 U.S. 604 (1958), and *People vs. Halvey,* 330 U.S. 610 (1947), have between them left the interstate respect for custody decrees in a relatively weak position. What is needed is a strong decision in a case which requires that respect. A decree recognizing that Pennsylvania must give effect to this Puerto Rican decree will strengthen generally that respect and reduce the chaos which is developing. In this respect the *Irizarry* case presents to this court a federal question of circumstance not hitherto adjudicated. The time has come when this court ought to speak out.

The evil we deal with is the evil of the transitory custody case. The evil of the transitory divorce case is now well recognized and has been brought under control. We have not yet faced up, however, to the evil of the transitory custody case, and it is growing in scope and malignancy. Children have been abducted across state lines and the receiving state has accepted jurisdiction, one example being *Commonwealth ex rel. Schofield vs. Schofield*, 173 Pa. Superior Ct. 631, 98 A. (2d) 437 (1953). While in their opinions the courts in such situations have pretended to abhor the practice, their decisions favoring jurisdiction have rewarded the wrongdoers. These principles are filtering down now to the bar, and as the bar becomes more familiar with them, so will the public. The reward to the abducting parent in obtaining a hearing in his own state can scarcely be expected to instill in the youngsters a sense of law and order. The well meaning attempts by judges to wrestle with the problem of the broken family before them spawn trouble for the broken family which will face them in the future. The states themselves exhibit an unseemly attitude in challenging each other. If the cases before the Supreme Court of Pennsylvania are any index of these cross-state occurrences, there has been a rapid rise in them in the last three years. The Supreme Court of the United States has its place in dealing with this situation. To the extent that the full faith and credit clause impinges upon the actions of the rival courts, it can step in and provide a measure of stability. We need a greater measure of stability than we now have. Surely it is time to say that three days or ten days are insufficient to afford a change of circumstances and that Pennsylvania should keep its hands off. Full faith and credit, however applied in custody cases, still has some meaning and still has some effect, and the Supreme Court should say so.

The parochialism which is sometimes exhibited by the receiving state has been commented upon in *Morrill vs. Morrill*, 83 Conn. 479, 492, 77 Atl. 1, 6 (1910), in which the Supreme Court of Errors of Connecticut said:

> "[As] a finding of changed conditions is one easily made when a court is so inclined, and plausible grounds therefore can quite generally be found, it follows that the recognition extraterritorially which custody orders will receive or can command is liable to be more theoretical than of great practical consequence."

A specific example can be cited in *Commonwealth ex rel. Fortunes vs. Manos*, 140 Pa. Superior Ct. 352, 354, 13 A. (2d) 886 (1940), where the court said:

> "Though the court has the power to commit a child to a non-resident parent, only unusual circumstances can justify the placing of the child beyond the jurisdiction of the court."

Under the present state of the law the problem with any court granting a custody order in a bi-state situation is this: shall it permit the minor to leave the geographical area of that state? My office is in Chester, Pennsylvania. From my front door I can see across the Delaware River into New Jersey. Cars passing that front door can be in Delaware in fifteen minutes. Our states generally are closer together than ever before. To make state boundaries a prison wall for a child would be unthinkable. Yet, if a father in Pennsylvania is given custody and a mother in Delaware is permitted to receive the child on Sunday visits, does not the Pennsylvania court run the risk of its work being undone by Delaware? Can it safely allow a visitation across state lines?

If the respondent is right in the Irizarry case, such a visit is no longer safe and Pennsylvania may not trust Delaware. Surely we are a better knit republic than that. Surely there is enough force in the full faith and credit clause to enable a parent to send a child across a state line with perfect confidence. The fifty states need an adjudication so holding.

No effect should be given the fact that the three weeks' projected visit to Pennsylvania was not within the specific terms of a Puerto Rican court order. Surely our courts desire parents to make practical alterations as to the visitation times when the specific need arises without running to a judge to get his written endorsement. The visit was in the spirit of the previous orders, and, it may be suggested, under their aegis. The analogy has often been drawn that the state is a third party in marital matters. If the state then be such an interested party, should not further consideration be given to its not being side-shouldered by some other state? If the analogy be true, how can it so easily be pushed out of place? The real answer ought to be that full faith and credit prevents it from being so pushed aside. Its jurisdiction ought to depend on objective events, not on the whim of the parent who leads the child into fresh pastures. It should not be so easy to supplant the initial jurisdiction by one in which the child happens to stray.

No consequence should be attached to the fact that the Puerto Rican records, although certified by the clerk, do not also bear the certificate of a judge that the attestation is in proper form, as referred to in the Act of June 25, 1948, c. 646, 62 Stat. 947, 28 U.S.C.A. 1738. Counsel for the respondent waived any defect of this kind, as appears on pages 123a and 124a of the record.

No consequence should be attached to the fact that no hearing in Pennsylvania has as yet been had on the merits. Pennsylvania procedure permits an appeal limited to jurisdictional questions and this was availed of here. Act of 1925, P. L. 23, 12 Purdon's Pennsylvania Statutes 672. The action of the Common Pleas Court in concluding to hear evidence on the merits was denial in itself of the Puerto Rican proceedings. The father should not have to go through litigation in Pennsylvania, risk losing his case there, and then complain to the United States Supreme Court. He is entitled to do so now.

APPENDICES

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i. A copy of the opinion of the Superior Court of Pennsylvania is appended hereto, marked Exhibit 1. There is no opinion of the Pennsylvania Supreme Court. Its entire action is set out, however, as one of the judgments and decrees sought to be reviewed as required by Rule 23(j) and as recited below.

j. A copy of the judgments and decrees sought to be reviewed are appended hereto being marked Exhibits 2, 3, and 4, being respectively the judgments and decrees of the Supreme Court of Pennsylvania, the Superior Court of Pennsylvania, and the Court of Common Pleas of Delaware County, Pennsylvania.

Respectfully submitted,

Charles E. Rankin
Attorney for petitioner

EXHIBIT 1

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 364 October Term, 1960

In re: Custody of Luis Oscar Irizarry and Carlos Irizarry, minor children of Luis Oscar Irizarry and Isabel Blondet Armour

Appeal of: Oscar Irizarry, Sr.

Appeal from the Order and Decree of the Court of Common Pleas of Delaware County at No. 1471 June Term, 1960.

Opinion by Watkins, J., Filed: April 13, 1961:

The question involved in this appeal arose out of a petition by the mother-appellee seeking custody of her two sons. Preliminary objections were filed by counsel for the father, who entered a special appearance for the purpose of challenging the jurisdiction of the court on the theory that full faith and credit must be given to the decree of custody already in existence in Puerto Rico. The Court of Common Pleas of Delaware County determined it had jurisdiction and dismissed the preliminary objections. This appeal followed.

The appellee then filed a motion to quash the appeal on the ground that it was interlocutory. The question of

jurisdiction of the subject matter of this appeal is properly before us and the petition to quash is dismissed.

The contention of the appellant is that the court below does not have jurisdiction of this custody matter because it is bound to give full faith and credit to the custody decree of Puerto Rico and further, that the court does not have jurisdiction of the children because they are not residents of Pennsylvania but are here only for a temporary visit.

The facts that are pertinent to the jurisdictional discussion are as follows: Dr. Luis Oscar Irizarry, the appellant father and Isabel Irizarry Armour, the appellee-mother, were lifelong residents of Puerto Rico until their divorce on August 7, 1957. In the same action, the Superior Court of Puerto Rico awarded custody of the two boys, Luis and Carlos, aged at the time of this hearing, ten and nine respectively, to the father. The mother remarried in November 1958 and now lives with her present husband, George P. Armour, Esq., in Wayne, Delaware County, Pennsylvania. Dr. Irizarry remarried in the fall of 1959, continued to live in Puerto Rico, and the children continued to live with him until they left for their present visit to Pennsylvania.

The children had made two visits to their mother's home prior to this visit. The appellant sent the children, accompanied by two of his sisters, for a visit with the appellee in her home in Delaware County, Pennsylvania, for a period to begin July 13, 1960 and end August 3, 1960. On July 26, 1960, the present petition for custody was filed and the jurisdictional question raised.

The court below held that: "It has been held uniformly that a decree or order of a court involving the custody of minor children is never a 'permanent' adjudication of

the court; and therefore, when conditions have changed after such an order is made, the court in which the children reside at such a time has the right and jurisdictional authority to make a new original order based upon such changed circumstances as appear by proper proof. The result of such action is in this sense an 'original' order and not a modification of a previous decree of a court in another jurisdiction. Such action does not violate the constitutional provisions of 'giving full faith and credit to the decrees of courts of other jurisdictions.' . . . It has been uniformly held that the Commonwealth is an interested party in matters involving the custody of infants found within its territory."

"Jurisdiction of a court in a proceeding involving custody is determined by the domicile or resident of the child." Com. ex rel. Graham v. Graham, 367 Pa. 553, 80 A. 2d 829 (1951). "The majority rule in the United States is that a decree of a proper court awarding the custody of a child is conclusive of the status of the child and therefore will be enforced in other states. The award is conclusive only of the status of the child and the parent at the time; it may be altered for reasons arising subsequent to the decree. The child must, however, be within the jurisdiction of the decree-granting state; otherwise the state is without power to determine its status." Freedman, Law of Marriage and Divorce, §793.

Restatement, Conflict of Laws, §148. "In any state into which the child comes, upon proof that the custodian of the child is unfit to have control of the child, the child may be taken from him and given while in the state to another person." Section 147 of the Restatement, Conflict of Laws, holds: "Except as stated in §148 (supra) when

the custody of a child has been awarded by the proper court to either parent the decree will be enforced in other states." So it appears that the law in Pennsylvania is clear that full faith and credit must be given to the decree of custody of a sister state so far as it determines the status of the child at the time it was issued, but, if the Pennsylvania Court has jurisdiction, it may, because of the interest of the Commonwealth in the child, and because the welfare of the child is a paramount consideration, and because decrees of custody are temporary in nature and subject to modification by changing conditions, determine custody on the present facts and may even exercise its independent judgment on the same facts that determined the foreign state's order. Com. ex rel. Schofield v. Schofield, 173 Pa. Superior Ct. 631, 98 A. 2d 437 (1953); Com. ex rel. Graham v. Graham, 367 Pa. 553, 80 A. 2d 829 (1951); Com. ex rel. v. Daven, 298 Pa. 416, 148 A. 524 (1930); Com. ex rel. Scholtes v. Scholtes, 187 Pa. Superior Ct. 22, 142 A. 2d 345 (1958); Com. ex rel. Gregory v. Gregory, 188 Pa. Superior Ct. 350, 146 A. 2d 624 (1958); Com. ex rel. Swigart v. Swigart, 193 Pa. Superior Ct. 174, 163 A. 2d 716 (1960).

If the court has jurisdiction it is because the two boys are residents of Delaware County. It is true that the action was brought by the mother on July 26, 1960, just thirteen days after they arrived for a visit with the consent of the custodial parent. However, the law is well settled in Pennsylvania that jurisdiction in custody cases follows either the domicile of the minor children or their residence and the domicile of the children is that of the parent having custody. Com. ex rel. Burke v. Burke, 168 Pa. Superior Ct. 578, 80 A. 2d 87 (1951); Com. ex rel. Teitelbaum v. Teitelbaum, 160 Pa. Superior Ct. 286, 50 A. 2d 713 (1947); Com. ex rel. Swigart v. Swigart, supra.

In Lesker Case, 377 Pa. 411, 105 A. 2d 376 (1954), at p. 418, the Supreme Court said: "It seems impossible to restrict the terms habitation, residence and domicile to airtight, waterproof compartments, . . . However, in strict technical terminology, habitation may be defined as an abode for the moment, residence, a tarrying place for some specific purpose of business or pleasure, and domicile the fixed, permanent, final home to which one always intends to return."

Restatement, Conflict of Laws, §148, supra, says that jurisdiction will lie, "In any state into which the child comes, . . ." Residence being sufficient for jurisdiction and residence being a tarrying place for some specific purpose of business or pleasure, the courts of Pennsylvania have held that the mere presence of the children within the jurisdiction of the court, even for the thirteen day visit with their mother, is sufficient. Com. ex rel. Graham v. Graham, supra.

As counsel for the appellee readily admits, "the children were sent voluntarily to their mother's home in Pennsylvania by their father. She asked for them to come and he sent them. He was not carrying out the orders of any prior court order or decree." Her intent at the time she requested the visit and the manner by which she obtained possession of the children so that the jurisdictional requirements of Pennsylvania have been met, must be taken into consideration insofar as her good faith may have a bearing upon her fitness to be awarded their custody. Com. ex rel. v. Daven, supra.

There is merit in the contention of the appellant that the extension of the rule in the Schofield case may well invite cases of legalized abduction and may result in the

inclusion in custody orders of injunctive restriction on visitation.

And too, what was said in 4 A.L.R. 2d 7, at pg. 15: "Generally where a court of a state is passing upon its own jurisdiction to award custody of a child that is physically present, though domiciled elsewhere, it is likely to be motivated by the doctrine of parens patriae and to proceed to decide for itself what is for the best interest of the child, and if there is in existence a valid judgment of another state awarding such custody, to give at least lip service to the binding effect thereof by limiting the court's consideration of the merits to conditions which have changed since that foreign judgment was rendered—all too frequently such changed conditions being found to exist in favor of a local citizen", is especially pertinent here, where one of the interested parties, the husband of the petitioner, is an attorney-at-law and as such an officer of the court. The hearing on the merits should be conducted with the above comments in mind.

Order affirmed and remanded for the purpose of a full hearing on the merits.

Wright, J. would quash the appeal.

Montgomery, J. dissents.

EXHIBIT 2

ACTION BY SUPREME COURT OF PENNSYLVANIA

Petition refused. July 12, 1961. Per Curiam.

EXHIBIT 3

ACTION BY SUPERIOR COURT OF PENNSYLVANIA

Order affirmed and remanded for the purpose of a full hearing on merits.

EXHIBIT 4

ACTION BY COURT OF COMMON PLEAS

Accordingly, it is hereby ordered and decreed

1. The preliminary objections by the Respondent challenging the jurisdiction of this court to receive evidence and to determine the question of the custody of the minor children, Luis and Carlos Irizarry, are hereby dismissed.

2. This court claims to have jurisdiction to hear and determine the question of the custody of said minor children on its merits.

3. This case will be placed on a List for the purpose above stated.

4. Counsel for the Respondent shall have the right of entering a general appearance for the Respondent, if he so desires, and the right to file an Answer on the merits also if he so desires.